

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-221924

DATE: June 24, 1986

MATTER OF: Ram Enterprises, Inc.

DIGEST:

Agency's determination of its minimum needs for a "critical" repair part is upheld where the protester has not shown that the agency's determination was unreasonable.

Ram Enterprises, Inc. (Ram), protests its failure to receive award under request for proposals (RFP) No. DLA700-85-R-3033 issued by the Defense Construction Supply Center, Defense Logistics Agency, for the procurement of governor valve stems. Ram asserts that it is entitled to award as the "low responsive, responsible offeror" which has been approved by the Naval Sea Systems Command (NAVSEA) as an alternate supplier for the valve stems.

The protest is denied.

RFP DLA700-85-R-3033 was issued by the agency on August 19, 1985, for 99 governor valve stems for use on steam turbines on Navy vessels. The acquisition item description provided in pertinent part that the stem, NSN (National Stock Number) 2825-00-659-9912, is a "critical application item" and that specified part numbers NB3178, NB6599PC59, 59NB6599, and 831033 manufactured by Terry Corporation are acceptable parts. Under the solicitation, as amended, offerors were permitted to offer alternate products under standard clause "L30- Products Offered." This clause requires offerors of alternate products to submit all drawings, specifications or other data necessary to enable the government to determine whether an alternate product is either identical to or physically, mechanically, electronically and functionally interchangeable with the exact product specified. The clause advises offerors that the failure to furnish all necessary information may preclude consideration of the offer, stating that the alternate product will be considered technically unacceptable if its acceptability cannot be determined prior to award.

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Ram, the low priced offeror, offered Ram part number 357433146-59, which the agency advises was based on Terry's technical drawing NB-6599. In its proposal, Ram advised that it had been approved as a manufacturer of that part as evidenced by a Department of Defense (DD) Form 1418. Terry, on the other hand, in its August 19 proposal, offered Terry part No. 831033, which is manufactured in accordance with Terry drawing NB-3178 Rev. B6.

The agency advises that on October 17, the contracting officer forwarded the proposal submitted by Ram to the Center's technical division for evaluation of the alternate part offered by Ram. On the following day the technical division determined that the alternate part offered by Ram was unacceptable, and advised the Center that the solicitation's item description was incorrect in that it should incorporate an August 24, 1985, revised item description for the valve stems. This revised item description provides that the only valve stem acceptable for use is Terry part No. 831033, manufactured in accordance with Terry drawing NB-3178 Rev. B6.

The agency states that on October 23, the contracting officer orally advised Ram that only alternate parts manufactured in accordance with Terry drawing NB-3178 Rev. B6 would be considered technically acceptable. Ram was requested to furnish the Center with Terry drawing NB-3178 Rev. B6 for the technical evaluation of any alternate product offered since the agency did not possess the new Terry drawing which, we are advised, is proprietary. Ram, which did not have access to Terry drawing NB-3178 Rev. B6, advised the contracting officer that it had contacted NAVSEA, the activity for which the Center was procuring the valve stems, and was told that valve stems manufactured on the basis of Terry drawing NB-6599 remained acceptable since no changes had been made in the parts. As a result of this information from the protester, on November 1 the contracting officer resubmitted Ram's alternate offer to the Center's technical division for further evaluation. As a result of this action the Center's technical evaluator contacted NAVSEA and explained that Terry had permitted the Center to view proprietary drawing NB-3178 Rev. B6 in August 1985 and that "major" material and dimensional changes in the valve stems had rendered Terry drawing NB-6599 obsolete. The agency further advises that the NAVSEA representative agreed that only alternate products which are manufactured in accordance with Terry drawing NB-3178 Rev. B6 are acceptable.

Based on the Center's technical evaluation and the concurrence of NAVSEA with its findings, the contracting officer rejected as technically unacceptable the valve stems offered by Ram. The agency advises that the contracting officer did not issue an amendment to the solicitation since the offerors already had been orally advised that only valve stems manufactured on the basis of Terry drawing NB-3178 Rev. B6 would be acceptable and that Ram did not have access to that drawing.

Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.606(a) (1984), provides that generally contracting officers shall issue a written amendment to the solicitation when either before or after receipt of proposals the government changes, relaxes or otherwise modifies its requirements. However, we have often stated that when an offeror is informed of an agency's changed requirements during negotiations it is on notice of them notwithstanding their inconsistency with the requirements as set forth in the solicitation. See Brizard Co., B-215595, Oct. 11, 1984, 84-2 C.P.D. ¶ 399. Where the agency has advised the offerors of its changed requirements, the failure to formally amend the solicitation is not significant. Id. at 3. Ram has not disputed the agency's statement that it was advised of the changes in the requirements for the valve stems. Furthermore, the protester has neither objected to the agency's failure to amend the solicitation nor alleges that such inaction prejudiced it. Under the circumstances, we believe that it can be reasonably concluded that Ram was not prejudiced by the agency's failure to issue a formal amendment to the solicitation to show that only Terry part No. 831033, manufactured in accordance with Terry drawing NB-3178 Rev. B6 or an equivalent alternate product was technically acceptable.

The protester has not objected to the restriction imposed on offerors by standard clause "L30-Products Offered" which imposes upon offerors the responsibility of providing information which will enable the government to determine the technical acceptability of any alternate product offered. Rather, the protester objects to the agency's determination to require either Terry part No. 831033 manufactured on the basis of Terry drawing NB-3178 Rev. B6 or an equivalent alternate product. The protester contends that its alternate valve stem based on Terry drawing NB-6599 should continue to be deemed an acceptable alternate product.

In an interoffice memorandum dated March 28, 1986, the office of the Acting Chief, Aircraft and Components Branch, stated that a redesign of the turbines involved has caused the Center to examine all alternate repair part suppliers. The memorandum indicates that the original valve stem is brittle after manufacture and has a tendency to swell at normal operating temperatures causing the stem to stick. According to the memorandum, this problem could become manifest since the valve stem "rides" in a redesigned guide, and the mixing of old stems and new guides or new stems and old guides could cause "severe operational problems and possible equipment loss due to sticking or malfunctioning substandard valve stems." The memorandum concluded that the reliability and longevity of these valve stems would be questionable when not manufactured in accordance with Terry drawing NB-3178 Rev. B6.

The determination of the government's minimum needs, the method of accommodating those needs, and the technical judgments upon which those determinations are based are primarily the responsibility of the contracting agency. Herblane Industries, Inc., B-215910, Feb. 8, 1985, 85-1 C.P.D. ¶ 165. The agency is most familiar with the conditions under which the goods have been used in the past and will be used in the future. We therefore will not question a procuring agency's determination of its minimum needs unless there is a clear showing that the determination has no reasonable basis. Eaton Leonard Corp., B-215593, Jan. 17, 1985, 85-1 C.P.D. ¶ 47. Once an agency establishes support for its contention that the requirements which it imposes are needed to meet its minimum needs the burden shifts to the protester to show that the requirements complained of are clearly unreasonable. See Polymembrane Systems, Inc., B-213060, Mar. 27, 1984, 84-1 C.P.D. ¶ 354.

As set forth above, the agency has determined that the original valve stems have had a tendency to stick at normal operating temperatures, that this problem could be evident where the stem rides in a redesigned guide, and that severe operational problems and equipment loss may result where old valve stems are used with new guides.

While the protester expresses skepticism about the validity of the agency's reasons for requiring the redesigned valve stems based on Terry drawing NB-3178 Rev. B6 or an acceptable alternate, the protester has not provided any evidence or arguments which would indicate that

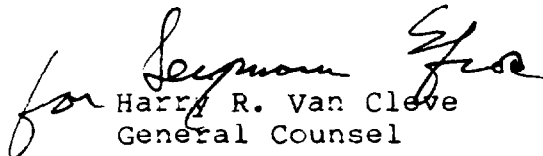
the agency is incorrect as to the operational deficiencies inherent in the prior valve stem design or which would establish that the old valve stems would be appropriate for use in the new redesigned stem guides.

The main thrust of the protester's contention that the new valve stem design is not required is that NAVSEA, the activity for which the stems are being procured, still regards as acceptable the valve stems which it offered in its proposal and that NAVSEA has not made a determination that the new valve stem design is required. The protester also alleges that NAVSEA has been entirely omitted from the determination to require a redesigned valve stem. As set forth above, however, the agency has advised that NAVSEA has agreed with the Center's technical evaluation concerning the requirement for the new redesigned valve stem. While the protester asserts that NAVSEA has not in fact agreed with the agency as to the requirements for the new valve stem, it has not provided any evidence in support of this assertion. The protester's unsupported allegation concerning the views of NAVSEA is insufficient to rebut the facts as presented by the agency. See American Airlines Training Corp., B-217421, Sept. 30, 1985, 85-2 C.P.D. ¶ 365 at 8.

The protester points out that the agency's interoffice memorandum points out that mixing of new stems and old guides could also cause operational problems and Ram asserts that if new stems are procured they may very well be used with old unmodified turbines with old guides. The agency memorandum discussed above, indicates that the stem would ride in a redesigned guide. As set forth above, the agency is most familiar with the conditions under which a procured item will be used in the future and, here, the agency with the concurrence of NAVSEA has determined that only the new redesigned valve stem or an acceptable alternate part will meet its needs.

Based on the record before us, we do not believe that the protester has shown that the agency's determination of its minimum requirement for the valve stems is unreasonable.

The protest is denied.


Harry R. Van Cleve
General Counsel